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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO. 5508/2004

KANHAIYA LAL GURBANI Vs. STATE OF RAJASTHAN

DATE: 09.07.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Ashok Gaur for the petitioner.
Mr. B.S. Chhaba, Addl. GA for the State.

This writ petition is directed against the order dated 08.07.2004 (Annexure-6) whereby the order of compulsory retirement dated 11.10.2000 has been revoked by the respondents with certain conditions.

The petitioner has challenged the conditional withdrawal of the compulsory retirement order dated 08.07.2004. As per conditions, out of 17 persons, 14 persons have joined their services but the petitioner has not joined his services pursuant to the order dated 08.07.2004. In such eventuality, notice was issued to the petitioner and he was asked to join his services and it was also informed that since 8 months after passing of the order dated 08.07.2004 the petitioner did not join his services and in case the petitioner do not join his services pursuant to the aforesaid order

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dated 08.07.2004, then the order dated 08.07.2004 shall stand withdrawn and ultimately on account of non-joining of the petitioner, the order of revocation of the compulsory retirement dated 08.07.2004 so far as petitioner and two other persons are concerned, has been withdrawn vide order dated 22.08.2005 (Annexure-A/3).

This order has not been challenged by the petitioner and this matter comes up on the application filed on 09.05.2007 by the petitioner for amendment in the writ petition. The petitioner submits that he only came to know that reply to the contempt petitioner has been filed.

It is also contended on behalf of the petitioner that vide interim order dated 18.10.2006, the operation of the order dated 08.07.2004 (Annexure-6) has been stayed and after receipt of the notice they have withdrawn the order.

The averments made on behalf of the petitioner on the face record is false as the interim order was granted by this Court on 18.10.2006 whereas the respondents have issued notice to the petitioner on 17.05.2005 to join his services but the petitioner failed to join pursuant to the order dated 08.07.2004 and after a period of 8 months ultimately vide order

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dated 22.08.2005 the order of revocation of compulsory retirement has been withdrawn so far as the petitioner and two other persons namely Shri Jagdish Narain Pandey and Shri Babulal Arya are concerned.

Thus, the order of revocation of compulsory retirement was passed about two years before the interim order granted by this Court on 18.10.2006 and now this amendment application has been filed after two years of the passing of the order dated 22.08.2005. The petitioner could have challenge the said order well within time by way of filing fresh writ petition, therefore, in my considered view, the present writ petition has become infructuous as the order which is under challenge in this writ petition dated 08.07.2004 has been withdrawn by the respondents vide order dated 22.08.2005.

Consequently, the present writ petition has become infructuous and after a delay of two years I do not find any merit in the amendment application as fresh cause of action is available to the petitioner.

Accordingly, the writ petition fails and the same is hereby dismissed as having become infructuous. The amendment application moved on behalf of the petitioner also fails and is hereby rejected.

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However, the petitioner is given liberty to redress his grievance.

(K.S. RATHORE), J.

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